IN THE COURT OF APPEALS OF IOWA

No. 5-451 / 95-149

STATE OF IOWA,

Plaintiff-Appellee,

vs.

MICHAEL M. HARRIGAN,

Defendant-Appellant.

FILED
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CLERK SUPREME COURT

Appeal from the Iowa District Court for Dubuque County, Randal T. Nigg, Judge.

Michael Harrigan appeals from his conviction, following a guilty plea, for third-degree theft in violation of Iowa Code section 714.2(3) (1995). **AFFIRMED.**

William A. Lansing of Lansing Law Office, Dyersville, for appellant.

Thomas J. Miller, Attorney General, Angelina M. Smith, Assistant Attorney General, Fred H. McCaw, County Attorney, and Timothy Gallagher, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., and Habhab and Huitink, JJ.

HABHAB, J.

Michael Harrigan was alleged to have stolen $876 in property. He was taken into custody and remained in custody for ten days prior to his arraignment. The pre-trial services report indicated Harrigan was, at that time, going through withdrawal symptoms from his addiction to crack cocaine. At the arraignment, Harrigan's counsel requested, and the court agreed, to proceed directly with a plea and sentencing. Harrigan pleaded guilty to third-degree theft. He was sentenced to a two-year term.

Harrigan appeals.

On appeal, Harrigan contends he was denied due process when the district court accepted his guilty plea without ordering a competency hearing. Harrigan also claims his trial counsel was ineffective in failing to request a competency hearing.

When a defendant is alleging error involving a constitutional right, such as here, we make an independent evaluation of the totality of the relevant circumstances to determine if such errors were made. *Rinehart v. State*, 234 N.W.2d 649, 658 (Iowa 1975); *State v. Jeffries*, 417 N.W.2d 237, 239 (Iowa App. 1987).

I. *Due Process.* Harrigan contends he was denied due process because of the district court's failure to order a competency hearing. A trial proceeding in which the defendant lacked "the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense" deprives the defendant of his right to due process. *State v. Mann*, 512 N.W.2d 528, 531 (Iowa

1994) (quoting *Drope v. Missouri*, 420 U.S. 162, 171, 95 S. Ct. 896, 903, 43 L. Ed. 2d 103, 112-13 (1975)). If sufficient doubt of the defendant's competency arises during a trial proceeding, the trial court must order a competency hearing sua sponte.[1] *Mann*, 512 N.W.2d at 531.

> Relevant factors in determining whether due process requires an inquiry as to competency include (1) defendant's irrational behavior, (2) demeanor at trial, and (3) any prior medical opinion on competence to stand trial. The critical question is "whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding -- and whether he has a rational as well as factual understanding of the proceedings against him."

State v. Lucas, 323 N.W.2d 228, 232-33 (Iowa 1982) (cites omitted).

> When the defendant's competency during trial court proceedings is challenged on appeal, our task is to examine the information before the trial court to determine if at the relevant time an unresolved question of the defendant's competency reasonably appeared.

State v. Kempf, 282 N.W.2d 704, 707 (Iowa 1979).

The transcript reveals Harrigan did not behave irrationally and was, in fact, coherent during the proceedings. The district court told Harrigan he had read the pre-trial services report regarding his withdrawal from crack cocaine. The court then asked what the withdrawal symptoms had been like since the time of the report. Harrigan responded:

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[1] A guilty plea proceeding is considered a trial court proceeding. *See State v. Lucas*, 323 N.W.2d 228, 232-33 (Iowa 1982).

> **Defendant**: It was extreme after about the third, fourth, fifth day, not being able to sleep and when I did, I'd fantasize about it, what not. *It's subsided quite a bit now.* Still find myself daydreaming about it and I did dream about it last night a little bit, but *it's manageable.* The thing I really started out wanting and needing the most was treatment, you know. If I had been anywhere else but little Dubuque County, I think my substance abuse problem would have been addressed differently, maybe go to detox and treatment might have been the number one priority instead of incarceration. My crimes are committed basically to support the drug habit and it's just a new thing to me, you know. I guess where I'm at right now, I'm just ready to plead guilty, be sentenced today and go on to the Iowa system and get my two-year sentence done.
>
> **The Court**: Okay. Mr. Kaufman, have you noticed any problems in communicating with Mr. Harrigan because of his withdrawal symptoms?
>
> **Mr. Kaufman**: No, Your Honor.
>
> **The Court**: You feel very comfortable that he's competent today to do these things that he's going to do, give up the rights that he wants to give up and proceed to sentencing today?
>
> **Mr. Kaufman**: Yes, Your Honor.

(Emphasis added.) Harrigan's discussion with the court reveals the symptoms were the worst prior to the arraignment. Harrigan himself stated the symptoms were manageable at the time of the arraignment. The transcript indicates Harrigan wished he had received treatment upon being taken into custody in Dubuque County. Contrary to Harrigan's assertions in his brief, the transcript does not indicate he desired to plead guilty and be sentenced in order to receive treatment. Harrigan's only mention of drug treatment at the arraignment was in the context of needing it for the initial withdrawal symptoms after he was taken into custody. Harrigan's interpretation of the transcript cannot be supported.

The transcript clearly illustrates the concern the district court had regarding Harrigan's competency. The court asked Harrigan personally how his withdrawal symptoms were. He stated they were "manageable" and had been at their worst prior to the arraignment. Harrigan also demonstrated at the arraignment he had discussed trial strategy with his attorney and was well aware of the proceedings against him. Harrigan stated he knew if he pled not guilty, there would be a chance he could reduce the third degree theft to fourth or fifth degree theft. Harrigan, however, stated he did not want to sit in the county jail and wait. He wanted to "go on to the Iowa system and get [his] two-year sentence done."

The district court also asked Harrigan's attorney and the jail administrator for their assessment of Harrigan's competency. Both felt he was competent. The district court was clearly aware of and sensitive to the competency issue. The district court did not impermissibly delegate its duty to determine competency; rather, the court made an attempt to gather as much information as it could from different sources in an attempt to make the determination.

We find the district court acted properly. The evidence did not raise sufficient doubt of Harrigan's competency. A competency hearing was not necessary.

II. ***Ineffective Assistance of Counsel.*** Harrigan's final contention is he was denied effective assistance of counsel. Harrigan claims his attorney should have requested a competency hearing.

When considering a claim of ineffective assistance of counsel, our ultimate concern is with "the fundamental fairness of the proceeding whose result is being challenged." *Strickland v. Washington*, 466 U.S. 668, 696, 104 S. Ct. 2052, 2069, 80 L. Ed. 2d 674, 699 (1984). In deciding this, we must consider whether "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Id.* at 686, 104 S. Ct. at 2064, 80 L. Ed. 2d at 692-93. "In examining counsel's conduct we review de novo the totality of relevant circumstances." *State v. Risdal*, 404 N.W.2d 130, 131 (Iowa 1987) (citations omitted). "Defendant bears the burden of proving by a preponderance of the evidence that (1) counsel failed to perform an essential duty and (2) prejudice resulted." *Id.* at 131-32.

In proving the first prong of this test, appellant must overcome the strong presumption counsel's actions were reasonable under the circumstances and fell within the normal range of professional competency. *State v. Hildebrant*, 405 N.W.2d 839, 841 (Iowa 1987). To prove the second prong of this test, appellant must show a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698 (1984).

Claims of ineffective assistance of counsel are usually not adjudicated on direct appeal because the attorney charged with ineffectiveness has not had an

opportunity to respond to the allegations. *State v. McKettrick*, 480 N.W.2d 52, 56 (Iowa 1992). Such claims may be decided on direct appeal if the defendant fails to show one of the two prongs. *See State v. Welch*, 507 N.W.2d 580, 584 (Iowa 1993).

As was previously discussed, the evidence in this case did not warrant a competency hearing. Defense counsel would not have had a basis for requesting a competency hearing. With that being the case, we conclude counsel did not breach an essential duty by failing to make a meritless request. *See State v. Ray*, 516 N.W.2d 863, 866 (Iowa 1994). Consequently, Harrigan's claim of ineffective assistance of counsel must fail on direct appeal.

AFFIRMED.